IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 629 of 2006
In
COMPANY PETITION No. 213 of 1998
With
COMPANY APPLICATION No. 633 of 2006
In
COMPANY PETITION No. 213 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDUSTRIAL DEVELOPMENT BANK OF INDIA LTD. - Applicant(s)
Versus
O.L. OF SWISS HEALTH FOOD PVT. LTD. & 3 - Respondent(s)

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Appearance :
MR GAURAV S MATHUR for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MR MRUGESH JANI for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
SINGHI & CO for Respondent(s) : 3,
MR RAJESH P MANKAD for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/01/2007

ORAL JUDGMENT

Both these applications are filed by the respective applicants claiming to be the secured creditors of the company in liquidation i.e. SWISS HEALTH FOOD PVT. LTD. (in lqn) for disbursement of the amount which is realized on selling of the properties of the company in liquidation.

2. It is submitted by the learned advocate appearing on behalf of the respective applicants that approximately an amount of Rs.2.10 crores are lying with the Official Liquidator of the company in liquidation on selling the properties of the company in liquidation and even setting aside some amount to be paid to the workers on establishment of their rights, the balance amount is to be distributed/paid to the respective secured creditors.

3. The Official Liquidator has filed the report dated 17-1-2007 pointing out that the Official Liquidator is having a sum of Rs.2,10,66,341/- in the company's account, out of which the Official Liquidator has to recover the security expenses which is already paid by the Official Liquidator to the security agencies from the funds available with the Official Liquidator in the Company Paid Staff Salary Reserve Funds Account. In addition to the above, the ICICI Bank Limited (Kotak Mahindra Bank Ltd.), IDBI and Bank of Baroda had deposited certain amounts towards security expenses, which is also to be reimbursed to the said Bank's/Financial Institutions. It is further submitted that over and

above, the Official Liquidator has to recover Central Government Fees as prescribed under Rule 291 of the Company Court Rules, 1959 from the amount realized from sale of assets of the company and distribution thereof. It is also further submitted in the report that so far as the workers' dues are concerned, they are yet to be considered and adjudicated upon by the Official Liquidator as the references are pending before the competent Labour Court. It is therefore, requested that if out of the amount already realized, a sum of Rs.1.50 crores is disbursed amongst the creditors, the same will be just and proper.

4. Heard the learned advocates appearing on behalf of the parties.

5. Having considered the respective applications and the report submitted by the Official Liquidator and having heard the learned advocates, as the Official Liquidator is having a sum of Rs.2,10,60,341/-, it will be just and proper at this stage to disburse an amount of Rs.1.50 crores amongst the secured creditors on ad hoc basis subject to filing usual undertaking by the respective secured creditors that if ultimately it is found that they are paid more amount which is required to be paid, then in that case, they will immediately repay the same with interest. So far as the expenses already incurred by the Official Liquidator towards the security agency which has been paid by the Official Liquidator from CPSSRF and the amount deposited by the secured creditors towards the security expenses as well as Central Government fee to be recovered by the Official Liquidator and that future claims and the claims of the workers to be considered by the Official Liquidator in future are

concerned, the balance amount of approximately Rs.60 lacs can be taken care. Under the circumstances, the Official Liquidator is directed to pay/disburse an amount of Rs.1.50 crores to the IDBI as lead institute for and on behalf of the secured creditors being first *paripasu* charge and it is agreed between the secured creditors that they will inter se decide the percentage ratio. The Official Liquidator to pay the aforesaid amount of Rs.1.50 crores to IDBI only on certain required undertaking by the respective secured creditors as stated above. It is agreed between the parties that the aforesaid payment would be on ad hoc basis subject to ultimate final decision and determination of the percentage ratio. The aforesaid exercise to be completed within a period of two weeks from today. It will be open for the Official Liquidator to open a dividend account for making the said payment and to withdraw the fixed deposit prematurely.

6. With these, the present company applications are disposed of. No costs.

(M.R.SHAH,J.)

shekhar/-